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Risk Metrics Group is the nation's largest and most influential proxy advisory firm. It advises many of the world's largest financial institutions on the environmental and social issues shareholders raise in proxy statements. Its guidance to large pension funds often determines the fate of shareholder proposals. This is their recent report on the Open MIC Internet Project. Open MIC is the media-responsibility group Trillium created and spun-out as a free-standing non-profit in 2006.



2009 U.S. Proxy Season

Internet Privacy, Freedom of Expression Campaign To Continue

By Jane Meacham

The biggest new campaign in the human rights arena for the 2009 U.S. proxy season has been one aimed at getting U.S.-based Internet Service Providers (ISPs) to disclose more about their user privacy policies. Despite a round of decisions by the Securities and Exchange Commission that allowed most large companies targeted to omit these resolutions from their proxy ballots, the campaign itself looks likely to survive the setback.

There were 12 resolutions related to this subject pending at the start of the proxy season, 10 in one new campaign plus two associated resubmissions, before the SEC started returning decisions on challenges by several of the companies. As of late March, SEC no-action letters in response to challenges from AT&T, Qwest Communications International, Comcast, Sprint Nextel and Verizon have allowed those telecommunications companies to omit the new proposal. It remains on the proxy ballots but unchallenged at EarthLink and Knology; at Charter Communications, CenturyTel and Embarq, where the proposal also was lodged, the companies' annual meetings have been postponed. The associated proposals, resubmissions from 2007 and 2008, are expected to be on the ballot at Google and Cisco Systems.

The main resolution, submitted in identical form at 10 companies, emphasizes the critical role played by these ISPs in providing Internet access to more than 211 million Americans—70 percent of the population—who use the Internet daily, according to Open MIC, or the Open Media and Information Companies Initiative, which is sponsoring this campaign. ISPs manage traffic, ensure communication and set rules that “shape, enable and limit the public’s Internet use,” the coalition says. The resolutions in Open MIC’s campaign call on the board of each ISP to issue a report looking at the effects of the company’s network management on public expectations for privacy and freedom of expression on the Internet.

The Open MIC initiative is a nonprofit media policy group started in early 2007 that works to “promote a vibrant, diverse media ecosystem through market-based solutions,” according to its website, www.openmic.org. The organization receives funding from the Otto Haas Charitable Trust, the Rockefeller Brothers Fund and the Surdna Foundation, among other sources.

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Internet freedom now human right

This issue also raises underlying questions about whether the publicly listed companies providing Internet technology are obligated to stand up against foreign censorship, or whether that's primarily a government role. With the rise over the last 20 years of the Internet and its unique power to allow global communication and unfettered sharing of text, video, sound and graphic materials of all sorts, a new human right to use this technological network without fear of censorship or invasion of privacy has been established. Several advocates of Internet freedom as a human right have emphasized the irony of these companies filtering or surreptitiously reviewing its customers' private Internet use in the United States while calling for less repression of the medium abroad.

This year's new shareholder campaign differs from the earlier proposals on Internet freedom because of its focus on the activities of domestically based ISPs serving U.S. customers rather than past calls for U.S.-listed companies providing international communications networks to avoid cooperating with state Internet censorship in other countries. Open MIC proponents said the issue remains of worldwide concern but they decided to narrow the focus to the United States this year to make their effort manageable.

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Concerns about the effect that U.S. ISPs' network management practices have had or could have on American Internet users' privacy and freedom of expression led several historically active socially responsible investors (SRI) to unite in a new coalition formed by Open MIC called the Open MIC Internet Project. Describing the goals of the Internet Project's shareholder coalition this year, Open MIC says it will "seek to impress upon the ISPs' managements that providing greater transparency and accountability for their network management practices is in the corporations' and their shareholders' best interests." (Emphasis Open MIC's.)

Human rights monitors express concern about U.S. ISPs using so-called Internet filtering in the same way that foreign governments, including China, have been publicly criticized for doing. "Internet Service Providers (ISPs) manage the information flows across their networks through a variety of means. Our concern focuses on practices whereby consumers are prevented or hindered from accessing or publishing certain information on the Internet, or whereby companies gain and exploit personally identifiable information about consumers," said an Open MIC report on the proxy proposal.

The two associated resolutions, one led by a shareholding group outside the Open MIC coalition joining Boston Common Asset Management and the Interfaith Center for Corporate Responsibility (ICCR), seek reporting and action from Cisco Systems and Google to reduce the likelihood that their business practices might abet the violation of human rights, including those associated with Internet use, anywhere in the world. The Google one is returning for the third consecutive year from the New York funds. The resolution got 8 percent support last year, up from 3.8 percent the year before. The resolution at Cisco got 35.8 percent support in 2007 and 32.4 percent in 2008.

Several companies challenged the Open MIC proposal at the SEC on grounds that it concerns ordinary business issues for management, not shareholders, to decide, and the SEC's staff attorneys concurred with those challenges, setting precedent for other companies contesting the resolution on the same grounds.

The opposition view

As an example of the ISPs' position, AT&T's challenge letter to the SEC read, in part, "These functions involve a host of complex technical, legal and financial issues that cannot be overseen or directed effectively by stockholders and for this reason have traditionally and properly been regarded as being within the province of management." AT&T also stated that it already published a comprehensive statement of its privacy policies, procedures and practices, including those relating to the Internet. The letter said that AT&T remains a "vigorous" proponent of freedom of expression on the Internet.

Two representatives of the new Open MIC coalition said it plans to appeal the AT&T decision, which let that company omit the proposal on ordinary business grounds and set the stage for similar no-action letters, to the SEC Commission. Only rarely does the SEC agree to review staff decisions on proposal omissions.

The Open MIC Internet Project putting forth these proposals comprises New York City Pension Funds, lead filer on six of the resolutions, along with influential SRI firms Trillium Asset Management, Boston Common Asset Management, Calvert

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Asset Management, Domini Social Investments, Harrington Investments and the As You Sow Foundation. A Jan. 28, 2009, press release from Open MIC said the coalition was seeking support from additional shareholders in voting for the 10 resolutions it sponsored.

The new resolution on Internet privacy and freedom of expression asks ISPs by the end of October or November 2009 for a report "examining the effects of the company's Internet network management practices in the context of the significant public policy concerns regarding the public's expectations of privacy and freedom of expression on the Internet." A New York City funds press release refers to news reports that "many people are concerned that companies are tracking and profiling their online behavior, and are uncomfortable with companies using their email content and web browsing histories to send relevant advertisements."

Regardless of the success this year of the still-pending proxy votes on resolutions addressing Internet privacy and freedom of expression, Pat Doherty, director of corporate social responsibility (CSR) for the New York City Comptroller's Office and a lead member of the Open MIC effort this year, told RiskMetrics Group, "This is a long-term campaign and serious policy issue for business and society as well, in our country and others." He said he expected the Open MIC coalition to continue working to bring attention to the subject, through future shareholder proposals and other activities. "This has to be watched very closely," Doherty said of the ability of ISPs to filter or review customer content on the Internet. "This is a serious policy issue and concern, and we're not just concerned about [how it affects] Americans," Doherty said.

Exempt from neutrality regulations

Most of the companies to which the Open MIC Internet Project submitted proposals this year traditionally have been considered "telephone" or "cable" companies, the advocacy group says in a recent report about its shareholder drive. Now, "ISPs are exempt from the 'common carriage' regulations that require traditional telecoms to be neutral handlers of transmissions over their lines, granting ISPs tremendous powers of discretion over the information flows that pass through their networks, both wired and wireless. In this regard they function more like media firms than telecoms," says the Open MIC shareholder proposal report.

The high-profile proponents for this issue together own well over 10.5 million shares in the 10 ISPs that they asked to report on network management and its intersection with Internet user privacy and freedom of expression.

Open MIC Executive Director Michael Connor told RiskMetrics that this year's resolution is intended to bring attention to "private companies controlling public networks" and to bring to the fore "important issues about how Internet pipes are being used now and [providers'] practices and policies, and how they can go wrong" in terms of customer privacy. "We're not saying there shouldn't be rules, such as protection of children from pornography through blocking, but we want to ask if companies feel any obligation to engage with their stakeholders, customers and shareholders on these issues. Companies tend to think these [privacy-related] problems will go away, but history shows they only get more complex over time," Connor said.